

§ 431.221

(4) Any individual who requests it because he or she believes the State has made an erroneous determination with regard to the preadmission and annual resident review requirements of section 1919(e)(7) of the Act.

(b) The agency need not grant a hearing if the sole issue is a Federal or State law requiring an automatic change adversely affecting some or all recipients.

[44 FR 17932, Mar. 29, 1979, as amended at 57 FR 56505, Nov. 30, 1992]

EFFECTIVE DATE NOTE: At 66 FR 6403, Jan. 19, 2001, § 431.220 was amended by revising the introductory text of paragraph (a), the semicolons after paragraphs (a)(1), (a)(2), and (a)(3) and the “and” after the third semicolon are removed and periods are inserted in their place, and a new paragraph (a)(5) is added, effective April 19, 2001. At 66 FR 11546, Feb. 26, 2001 the effective date was delayed until June 18, 2001, at 66 FR 32776, June 18, 2001 it was furthered delayed until Aug. 17, 2001, and at 66 FR 43090, Aug. 17, 2001 it was furthered delayed until Aug. 16, 2002. For the convenience of the user, the revised and added text is set forth as follows:

§ 431.220 When a hearing is required.

(a) The State agency must grant an opportunity for a hearing to the following:

* * * * *

(5) Any MCO or PHP enrollee who is entitled to a hearing under subpart F of part 438 of this chapter.

* * * * *

§ 431.221 Request for hearing.

(a) The agency may require that a request for a hearing be in writing.

(b) The agency may not limit or interfere with the applicant's or recipient's freedom to make a request for a hearing.

(c) The agency may assist the applicant or recipient in submitting and processing his request.

(d) The agency must allow the applicant or recipient a reasonable time, not to exceed 90 days from the date that notice of action is mailed, to request a hearings.

§ 431.222 Group hearings.

The agency—

42 CFR Ch. IV (10–1–01 Edition)

(a) May respond to a series of individual requests for hearing by conducting a single group hearing;

(b) May consolidate hearings only in cases in which the sole issue involved is one of Federal or State law or policy;

(c) Must follow the policies of this subpart and its own policies governing hearings in all group hearings; and

(d) Must permit each person to present his own case or be represented by his authorized representative.

§ 431.223 Denial or dismissal of request for a hearing.

The agency may deny or dismiss a request for a hearing if—

(a) The applicant or recipient withdraws the request in writing; or

(b) The applicant or recipient fails to appear at a scheduled hearing without good cause.

PROCEDURES

§ 431.230 Maintaining services.

(a) If the agency mails the 10-day or 5-day notice as required under § 431.211 or § 431.214 of this subpart, and the recipient requests a hearing before the date of action, the agency may not terminate or reduce services until a decision is rendered after the hearing unless—

(1) It is determined at the hearing that the sole issue is one of Federal or State law or policy; and

(2) The agency promptly informs the recipient in writing that services are to be terminated or reduced pending the hearing decision.

(b) If the agency's action is sustained by the hearing decision, the agency may institute recovery procedures against the applicant or recipient to recoup the cost of any services furnished the recipient, to the extent they were furnished solely by reason of this section.

[44 FR 17932, Mar. 29, 1979, as amended at 45 FR 24882, Apr. 11, 1980]

§ 431.231 Reinstatement of services.

(a) The agency may reinstate services if a recipient requests a hearing not more than 10 days after the date of action.

(b) The reinstated services must continue until a hearing decision unless,